

MT LEGISLATIVE HISTORY

Chapter 611 1983

Bill H 53 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) JAN 10 ☒ C

Hearing Date(s) JAN 25 ☒ C

_____ ☐ C

FEB 10 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out JAN 10 ☒ C

FEB 10 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 53

INTRODUCED BY BERGENE, FABREGA, SALES, HOLLIDAY, ROUSH,
MCCORMICK, FAGG, HANNAH, MILLER

IN THE HOUSE

January 3, 1983	Introduced and referred to Committee on Judiciary.
January 4, 1983	On motion by chief sponsor, Representatives Fabrega, Sales, et al., added as authors to the pre-filed bill.
January 10, 1983	Committee recommend bill do pass as amended. Report adopted.
January 11, 1983	Bill printed and placed on members' desks. On motion rules suspended and bill placed on second reading this day. Second reading, do pass.
January 12, 1983	Considered correctly engrossed.
January 13, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 14, 1983	Introduced and referred to Committee on Judiciary.
February 10, 1983	Committee recommend bill be concurred in as amended. Report adopted.
February 12, 1983	Second reading, concurred in.

February 15, 1983

Third reading, concurred
in. Ayes, 45; Noes, 3.

IN THE HOUSE

February 15, 1983

Returned to House with
amendments.

February 17, 1983

On motion consideration
passed until 46th Legisla-
tive Day.

March 1, 1983

Second reading, amendments
not concurred in.

On motion Conference
Committee requested.

March 3, 1983

Conference Committee
appointed.

April 13, 1983

Conference Committee
reported.

April 14, 1983

Second reading, report
adopted.

Third reading, report
adopted.

April 16, 1983

Conference Committee report
adopted by Senate.

Sent to enrolled.

Reported correctly enrolled.

HOUSE BILL NO. 53

INTRODUCED BY BERGENE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CIVIL REMEDY FOR THE ISSUANCE OF A CHECK DISHONORED FOR LACK OF FUNDS OR BECAUSE THE ISSUER HAS NO ACCOUNT WITH THE DRAWEE; SETTING FORTH DAMAGES THAT MAY BE RECOVERED; AND AMENDING SECTION 27-1-312, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Issuing a bad check — civil liability. (1) A person who issues a check, draft, or an order for the payment of money which is dishonored for lack of funds or credit or because he has no account with the drawee is liable to the person to whom the check, draft, or order is issued for damages in a civil action as provided in subsection (2).

(2) The amount of damages awarded pursuant to subsection (1) shall be an amount equal to the greater of \$100 or three times the amount for which the check, draft, or order was issued, up to an amount not exceeding the value of the check, draft, or order by more than \$500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was

issued has made written demand, mailed to the last known address or the address shown on the check, to the defendant for payment of the amount of such check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

(4) In case of any inconsistency between the provisions of this section and the provisions of Title 30, chapter 3, the provisions of this section apply.

Section 2. Section 27-1-312, MCA, is amended to read:

"27-1-312. Breach of obligation to pay money. The ~~Except as provided by section 1,~~ the detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon."

-End-

INTRODUCED BILL

HB 53

STATUS SHEET

JUDICIARY COMMITTEE

48 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
45	To establish a fee for declaration of marriage w/o solemnization, allocating it in the same manner as a marriage license fee.	1/3/83	Rep. Waldron	1/11/83	Do Pass as Amended	1/11/83
42	An act to create a lien in favor of agr. commodity producers and agr. commodity dealers that has priority over all other creditors of agr. commodity purchaser.	1/3/83	Rep. Donaldson	- -	Re-referred to Agriculture	2/4/83
47	To require the publication of a statement, with every rule proposed and adopted under implied rulemaking authority, that the rule lack the effect of law.	1/3/83	Rep. Schultz	1/5/83	Do Pass as Amended	1/13/83
53	Providing civil remedy for issuance of a check dishonored for lack of funds/no account setting forth damages that may be recovered.	1/3/83	Rep. Bergene	1/10/83	Do Pass as Amended	1/10/83
60	Requiring ministers who wish to be authorized to solemnize marriages to file a copy of their credentials with the clerk of the dist. court.	1/3/83	Rep. Shontz	1/11/83	Do Not Pass as Amended	1/11/83
61	To allow the testimony of incest victims to be videotaped for evidentiary purposes amending section 46-15-401.	1/3/83	Rep. Waldron	1/10/83	Do Pass as Amended	1/10/83

STACY FLAHERTY, Women's Lobbyist Fund, was a proponent of the bill. EXHIBIT B.

MARK MURPHY, County Attorneys, was also in favor of the bill. MURPHY proposed, however, the bill be amended to include victims of deviate sexual conduct. He felt that it would be easier for the victim to testify in a small group. The prosecution and the accused's attorney would both be present during the taping; therefore, the victim could be cross-examined.

There were no further proponents.

There were no opponents.

In closing, the sponsor stated he had no objection to the proposed amendment.

Section 45-5-505, concerning deviate sexual conduct, was read to the committee.

REP. J. BROWN asked about the actual videotaping. MURPHY replied in small counties it is sometimes necessary to call someone in to do the taping. Many times the sheriff's office is asked to do the taping providing the person running the equipment does not offend the victim. The tape is then kept for seven years as part of the official record. In cases of appeal to higher courts, the tapes are then used as evidence.

There were no further questions. The hearing on House Bill 61 ended.

HOUSE BILL 53

REP. BERGENE, sponsor, stated the bill's purpose is to provide a specific civil remedy for issuance of a check dishonored for lack of funds or no account, and setting forth additional damages that may be recovered. EXHIBIT C.

GEORGE ALLEN, Montana Retail Association, was in favor of the bill. EXHIBIT E.

CHARLES BROOKS, Gibson Discount, was also in favor of House Bill 53. BROOKS stated his type of business appeals to the masses. Sixty-two percent of his customers pay for merchandise by check. In 1982 approximately \$55,000 in checks were returned by the bank to his stores as nonsufficient funds. Employees are trained and use every step possible to prevent the usage of bad checks. Only 37% of the checks marked NSF are actually recovered. BROOKS stated collection agencies are used, which helps shift the burden from his employees. EXHIBIT F.

STAN JOHNSON was also in favor of the bill and agreed with previous testimony.

MIKE MCCABE, Lewis & Clark County Justice of the Peace, supported the bill. The bill would shift the burden from the counties to the retailers. It costs approximately \$10.00 to \$25.00 to file a civil action. He felt the practical approach is as in the criminal statute, 45-6-316, which provides for a maximum penalty of \$500.00 and six months imprisonment. If after notice the person does not make the check good, according to subsection 2, the check is NSF. County attorneys will prosecute. A warrant of arrest may be issued. There is then the added cost of the sheriff delivering the warrant. A plea of guilty or not guilty would be entered and a possible jury trial could result. In most cases it is hard to collect the fine of \$500.00 when the party cannot even pay the \$25.00 check. Approximately 96% of the bad check writers are first offenders. The other 4% are persistent offenders.

RALPH LEWIS, representing the Montana Landlords Association, supported the bill. In Billings the county attorney will not prosecute a person who pays his rent with a bad check.

JOHN CADBY, Montana Bankers Association, stated he also supports the bill.

There were no further proponents.

There were no opponents.

REP. BERGENE summarized the bill. EXHIBIT C. Amendments to the bill were given to the committee. EXHIBIT D.

REP. J. BROWN asked about the registered mail and certified mail section of the bill. The sponsor replied notice could be sent to the violator by registered or certified mail. However, that requirement was not put into the statute because sometimes people will not pick up registered or certified mail because they know what it contains. The five day notice period runs from the day the letter is sent.

ALLEN stated the businessmen do not want to lose their customers, especially since most are first time offenders. Additionally, the person is notified by his bank of the overdraft.

REP. FARRIS was in favor of the bill. She asked what the chances were of recovering the money owed when one reason people write bad checks is that they don't have any money. REP. BERGENE felt that if the statute were posted at the businesses, it would be a deterrent, which is one main purpose of the bill. It also gives the businessmen the ability to file suit.

BROOKS stated the average bad check is between \$5.00 and \$30.00. The \$100 penalty would be a deterrent. Most businesses are just interested in obtaining what is owed them and not in the penalty money.

REP. J. BROWN asked if the retailer would have to hire an attorney to file a suit against the person who wrote the check. MCCABE replied the easiest way to handle the case would be in Small Claims Court, where it is not necessary to have an attorney.

REP. JENSEN asked how often a civil penalty exceeding \$100.00 would be collected. MCCABE replied that was hard to answer. Check Rite has reduced his caseload by about 30%. He would anticipate an average of 50 to 60%.

REP. KEYSER asked by what percentage bad check writing has been reduced in Idaho where similar legislation has been passed. ALLEN did not know the exact figure, but estimated between 30 to 50%.

REP. EUDAILY asked if a person paid the retailer within the five day period would any action be taken. The answer was no.

When asked how this would apply to stolen checks, MCCABE replied generally a person files notice with the bank. It would be considered forgery and be a different situation.

REP. RAMIREZ was concerned with the five day notice. He stated most county attorneys require a ten day notice instead of a five day notice. REP. BERGENE replied that the merchants would probably want the notice to be a ten day notice, but the five day notice was suggested to make the bill conform to the criminal statute.

REP. JENSEN asked about the NSF problem for rental payment in Billings. LEWIS replied he did not know the exact figure. Many landlords, however, have called him asking for advice on the matter. Eviction is about the only way available to try and collect pastdue rent when a landlord has been given bad checks.

There were no further questions on House Bill 53.

The committee then went into executive session.

EXECUTIVE SESSION

HOUSE BILL 53

REP. JENSEN moved DO PASS. REP. KEYSER seconded the motion.

REP. EUDAILY moved the amendment of the bill providing an immediate effective date. (Amendment 2, as on EXHIBIT D, was not included in the motion). REP. ADDY seconded the motion.

REP. BERGENE stated the title should state "an effective date" and not "an immediate effective date". The motion was amended as such.

All were in favor of the amendment.

REP. KEYSER moved DO PASS AS AMENDED. REP. JENSEN seconded the motion.

REP. HANNAH was concerned with the Friday deposit and the writing of a check on Saturday. Perhaps there could be a mix-up in the bank when there actually are funds available to cover outstanding checks. REP. JENSEN stated the bank can remedy that action in favor of the customer. REP. KEYSER further stated there is the ten days before action can be taken under the bill.

All were in favor of the motion. HOUSE BILL 53 left the committee as DO PASS AS AMENDED.

HOUSE BILL 71

REP. JENSEN moved DO PASS, seconded by REP. SPAETH.

REP. HANNAH was concerned with the \$35.00 fee. REP. SPAETH responded the fee is acceptable.

The question being called, HOUSE BILL 71 received a DO PASS confirmation from the committee.

HOUSE BILL 61

REP. BERGENE moved DO PASS. REP. IVERSON seconded the motion.

REP. ADDY moved the bill be amended to include 45-5-505 concerning victims of deviate sexual conduct. It was also moved that the title be so amended. The motion passed unanimously.

STANDING COMMITTEE REPORT

January 10, 1983

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 53

First reading (White)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CIVIL REMEDY FOR THE ISSUANCE OF A CHECK DISHONORED FOR LACK OF FUNDS OR BECAUSE THE ISSUER HAS NO ACCOUNT WITH THE DRAWEE; SETTING FORTH DAMAGES THAT MAY BE RECOVERED; AND AMENDING SECTION 27-1-312, MCA."

Respectfully report as follows: That HOUSE Bill No. 53

BE AMENDED AS FOLLOWS:

1. Title, line 8.

Following: "27-1-312, MCA"

Strike: "."

Insert: "; AND PROVIDING AN EFFECTIVE DATE."

2. Page 2.

Following: line 16

Insert: "Section 3. Effective date. This act is effective on passage and approval."

AND AS AMENDED

DO PASS

48th

LEGISLATIVE SESSION

COURTESY OF THE
State Law Library
of MontanaCOMMITTEE ON Senate Judiciary

House BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
10	1-12-83	1-20-83	1-20-83				1-20-83		
13	1-12-83	1-20-83	1-20-83						1-20-83
15	1-10-83	1-17-83	1-17-83					1-17-83	
24	2-7-83	3-19-83	3-23-83					3-23-83	
27	1-19-83	1-31-83	2-8-83				2-8-83		
42	3-1-83	3-12-83	TABLED						
45	1-17-83	1-26-83	1-26-83				1-26-83		
53	1-14-83	1-25-83	2-10-83					2-10-83	
61	1-14-83	1-25-83	1-25-83				1-25-83		
71	1-14-83	1-25-83	1-25-83				1-25-83		
74	1-18-83	1-26-83	1-26-83						1-26-83
119	1-20-83	2-8-83	3-2-83					3-2-83	
130	2-1-83	3-3-83	3-3-83					3-3-83	
139	1-31-83	3-22-83	3-22-83						3-22-83
143	1-24-83	2-8-83	2-17-83						2-17-83
148	1-24-83	2-8-83	TABLED						

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 25, 1983

The fourteenth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on January 25, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 53: Representative Bergene, introduced the bill as being a civil remedy for the issuance of non-sufficient fund checks. HB53 would enable a merchant to collect bad checks through small claims court. Currently the statute does not give a penalty for the issuance of small bad checks, and it is Representative Bergene's feeling that by enacting a civil penalty provision bad check writers will be deterred.

George Allen of the Montana Retailer Association; Stan Johnson, a J.C. Penney Store owner; and Ralph Lewis of the Montana Landlord's Association, all spoke in support of HB53 and submitted their written testimony (Exhibits "A", "B" and "C", respectively).

Marc Racicot, speaking for the County Attorney's Association, advised that he would like to go on record as supporting this bill.

Julio Morales spoke in support of HB53 and informed the Committee of the necessity for this legislation. The Committee was also informed that Dave Gross of Billings was unable to be present at the hearing but wanted to go on record as voicing his support.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek questioned whether there should be a requirement for mailing by certified mail. He was informed that this would make the civil law coincide with the criminal law.

Senator Crippen questioned the wording of "three times the value or not more than \$500" and what would happen in the situation of a \$600 bad check. Representative Bergene informed him that a check of that amount would probably be handled criminally and that the intention of her bill is to deal with the small bad check writer. Senator Crippen also questioned the use of the term "defendant" and felt the bad check writer should be referred to as a "maker" or "issuer." Chairman Turnage concurred that perhaps the bill should refer to a "maker."

Chairman Turnage expressed his concern about determining what the damages are. He felt that the bill, as worded, would cause justice courts problems in determining how to assess the damages. He suggested that the Committee may feel the need to amend the bill for easier interpretation. He also questioned if this would repeal criminal penalties on checks. Marc Racicot felt it would not. Chairman Turnage then questioned if the statute would impose absolute liability and if there is any defense left under the law. Representative Bergene was informed that the intent of her bill was good, but there may need to be some work done so as to make her intentions clearer. She closed by re-emphasizing the need to provide merchants with a remedy to small bad check writers and expressed her willingness to cooperate with the Committee in any way possible to help clarify the language of the bill.

CONSIDERATION OF HOUSE BILL 61: Representative Waldron, sponsor of this bill, explained its intent to the Committee. There is currently a provision in the statutes for the videotaping of victims of sexual offenses. However, it does not explicitly refer to victims of deviate sexual conduct or incest victims. He expressed the necessity for these types of victims to be covered by the same law.

Marc Racicot, representing the County Attorney's Association, spoke in support of this legislation.

Stacy Flaherty, representing the Women's Lobbyist Fund and Elizabeth Gunderson, a pediatrician, also spoke in support of HB61 and submitted their written testimony (Exhibit "D").

There being no further proponents, and no opponents, the hearing on HB61 was closed.

CONSIDERATION OF HOUSE BILL 71: Representative Abrams, sponsor of this bill, presented it to the Committee at the request of the clerks of district courts. They feel a filing fee should be established which would be paid to them for the filing of certain items by a domiciliary foreign personal representative of the estate of a nonresident decedent.

Senator Crippen questioned the term "domiciliary foreign personal representative" and Representative Abrams replied that perhaps "nonresident personal representative" would be sufficient. Chairman Turnage advised that the specific term "domiciliary foreign personal representative" was used in order to be consistent with the Uniform Probate Code.

There being no further proponents, and no opponents, the hearing on HB71 was closed.

motion passed unanimously. Senator Mazurek then moved that SB183 DO PASS AS AMENDED. This motion also passed unanimously.

DISPOSITION OF HOUSE BILL 71: Senator Daniels moved that HB71 DO PASS. This motion carried unanimously.

DISPOSITION OF HOUSE BILL 61: Senator Berg moved that HB61 DO PASS. This motion also carried unanimously.

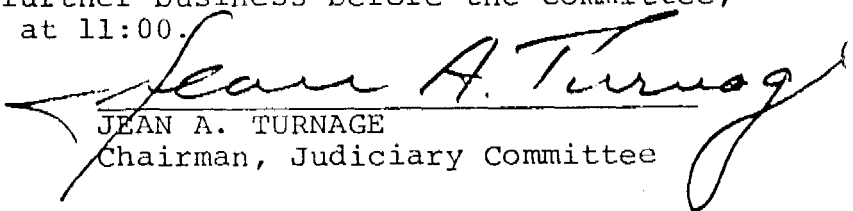
FURTHER DISCUSSION OF HOUSE BILL 53: It was the consensus of the Committee that HB53 should be referred to the staff for amendments.

DISPOSITION OF SENATE BILL 52: There was no question that a third judge is needed in the first judicial district. If SB26 is adopted it would provide for this third judge and SB52 would become void. Senator Mazurek moved that SB52 should be amended to reflect the election option of the county commissioners and the date the office would become effective. This motion passed unanimously. Senator Mazurek then moved that SB52 DO PASS AS AMENDED which also passed unanimously.

DISPOSITION OF SENATE BILL 129: The staff council advised the Committee that he had reviewed the amendments as proposed by Senator Fuller and Sheriff O'Reilly. The Committee approved the concept of the bill and the amendment which narrowed the bill to only writs of execution issued by a county treasurer. Senator Galt moved to adopt the amendment as proposed. This motion carried with only Senator Berg voting in opposition.

Senator Crippen moved that SB129 DO PASS. This motion carried with only Senator Daniels voting in opposition.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:00.


JEAN A. TURNAGE
Chairman, Judiciary Committee

Mr. Chairman and Members of the Committee:

My name is Goerge Allen and I am the lobbyist for the Montana Retail Association. I am here in support of the Dishonored Check Bill, House Bill #53.

Attached to a copy of my testimony, please find letters from County Attorneys from around the state, all endorsing this bill.

One may ask if there is a need for this legislation. My answer is definitely "YES:"

Also attached to my testimony, you will find a letter from the Northwestern Bank of Helena. In their letter they tell us that over the last six months there have been \$10,719,231.00 returned in insufficient funds and no-account checks, with a total of 26,924 checks. This averages out to be \$1,786,538.50 per month and 4,487 checks. Considering that these figures are just from the Helena area, you can see what a serious problem we have state wide.

What will House Bill #53 accomplish? Well, it allows the receiver of a dishonored check the option to choose which court he would take his claim to. If this bill passes, the receiver of a dishonored check could go to the civil court and get a judgement against the issuer of that check. He could claim three times the value of the check or \$100, whichever is greater, with a maximum of \$500.

The state of Idaho passed this bill two years ago. Since that time the amount of dishonored checks has been reduced by a significant number in that state.

There still would remain on the books the criminal law dealing with a professional. We don't want to disturb that law.

NORTHWESTERN BANK

350 North Last Chance Gulch
P.O. Box 597
Helena, Montana 59624
406/442-5050

BANCO

January 6, 1983

Mr. George Allen
Montana Retail Association
34 W. Sixth Avenue
Helena, MT 59601

Dear George:

The following is a list of numbers and dollars of returned checks from the Helena area banks and savings and loans during the period from June through December, 1982.

<u>Week of:</u>	<u>Total #</u>	<u>Total \$</u>
June 4	805	\$133,746
June 11	975	\$136,440
June 18	831	\$198,556
June 25	1091	\$139,075
July 2	(figures not available)	
July 9	783	\$184,931
July 16	1069	\$404,650
July 23	1422	\$215,512
July 30	1087	\$206,853
August 9	902	\$256,483
August 6	1109	\$290,902
August 20	914	\$357,757
August 27	954	\$264,949
September 3	918	\$686,025
September 10	550	\$309,781
September 17	951	\$269,252
September 24	871	\$378,827
October 1	1046	\$142,254
October 8	841	\$156,485
October 15	789	\$203,183
October 22	611	\$318,539
October 29	1240	\$235,482
November 5	954	\$3,761,705
November 8	781	\$140,430
November 19	986	\$240,186
November 26	845	\$211,997
December 3	865	\$136,365
December 10	965	\$361,716
December 17	886	\$289,220
December 24	883	\$87,930

Good luck with your effort, George. Please let us know if we can be of more help.

"A" 1-25-83
J. Allen
C. Allen

The big percentage of people that pass an insufficient funds check are not criminals and we feel they should not be treated as one. This bill would allow for civil actions instead of criminal actions.

When we started working on this problem we knew it was serious, but we did not realize just how serious. Dishonored checks are being used as a vehicle to finance, interest free, everything from groceries to clothing.

The big majority of the ten million dollars returned to the Helena businessman during the past six months was honored by the customer, but not until the merchant held the check for a period of time and contacted the customer by phone calls or letters.

We feel this bill will be a big deterrent to this serious problem.

Respectfully Submitted,

George E. Allen
Executive Vice-President
Montana Retail Association

"A"
1-25-83

OFFICE OF THE COUNTY ATTORNEY
J. FRED BOURDEAU
CASCADE COUNTY COURT HOUSE
GREAT FALLS, MONTANA 59401
TELEPHONE (406) 761-6700

December 27, 1982

Ms. Irene G. Russell
Montana Retail Association
P. O. Box 440
Helena, Montana 59601

Dear Ms. Russell;

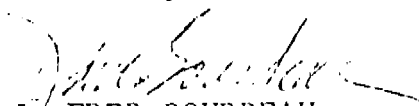
Thank you for your letter of December 17, 1982, and the opportunity to look at the Dishonored Check Bill the Association is endorsing.

Bad checks are a considerable problem. Though I have sought to prosecute as many bad check writers as possible under the criminal bad check law, the resources of the county attorney's office which can be devoted to this problem are limited. I am aware that a number of businesses simply write off bad checks because the cost of collection or prosecution far exceeds the value of the check.

A remedy such as the Dishonored Check Bill proposes would encourage businesses to pursue bad checks issued to them by defraying some of the cost of suit or collection. Those efforts would supplement criminal prosecutions and the exemplary penalties in the Bill might be an effective deterrent to future misconduct.

For those reasons I believe that passage of this legislation would address a very real problem in an effective manner. The only suggestions I would offer are that you consider the inclusion of stop-payment checks, that the words "check or other order for payment of money" be used so that there would be no question as to the Bill's inclusiveness, and that the word "depository" be used in place of "drawee" since the former appears in the U.C.C.

Sincerely,


J. FRED BOURDEAU
CASCADE COUNTY ATTORNEY

JFB/CCB/mb

"A"
1-25-83

V. G. KOCH
COUNTY ATTORNEY

OFFICE OF
COUNTY ATTORNEY
RICHLAND COUNTY
SIDNEY, MONTANA

PHONE 482-2505
BOX 831

December 21, 1982

George E. Allen - Executive Vice-President
Montana Retail Association
Box 440
Helena, MT 59624

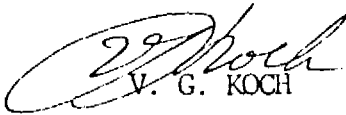
Re: Lola Hansen

Dear Mr. Allen:

Request has been made of this office for approval of proposed legislation pertaining to a civil remedy for the issuance of a bad check.

This office has no objections to the bill which I presume would be in addition to the criminal remedies now provided by State law.

Sincerely yours,



V. G. KOCH

VGK/mb

"A"
1-25-83

Lewis and Clark County

Courthouse — 443-1010
Helena, Montana 59601

MIKE MCGRATH
~~Charles A. Graveley~~
County Attorney

January 5, 1983

Montana Retail Association
34 West 6th Avenue
Helena, MT 59601

Dear Sir:

I have reviewed the provisions of House Bill 53
as introduced in the 48th Montana Legislative Assembly
and fully support the concept of the bill as introduced.

Sincerely,

Mike McGrath

MIKE MCGRATH, County Attorney
Lewis and Clark County

MM/sj

"A"
1-25-83



OFFICE OF THE COUNTY ATTORNEY

County of Hill

312 THIRD STREET
HAVRE, MONTANA 59501
265-4364

RONALD W. SMITH
COUNTY ATTORNEY

DAVID G. RICE
DEPUTY COUNTY ATTORNEY

GLEN DRIVENESS
DEPUTY COUNTY ATTORNEY

December 21, 1982

Mr. George E. Allen
Executive Vice-President
Montana Retail Association
P.O. Box 440
Helena, Montana 59624

Dear Mr. Allen:

Your proposed legislation by the Montana Retail Association concerning civil remedies for the issuance of a check dishonored for lack of funds has been given to me by Dwayne Kretchmer of Havre, Montana. Our office discussed the proposed legislation and as you recall I visited with you by telephone. We certainly find that the proposed legislation has merit.

For to long the County Attorneys have been utilized by creditors, merchants and other business people as a means for collecting money on checks which have been dishonored even though the law forbids the County Attorneys to do so. This proposed bill will give the person who receives the check a chance to be awarded damages based on the amount of money the check is written for.

As I discussed with you and as you are aware I support legislation to abolish the bad check criminal statute except for checks written as a common scheme or plan or felony forgery checks. One comment I would make concerning this proposed bill is that we think that there should be some language indicating that once the person holding the dishonored check has selected a remedy, either criminal or civil they are not then allowed to pursue the other remedy. In other words if he files a criminal charge he would not then be able to pursue civil remedies, likewise if he pursued the civil remedies he would not be able to then file criminal charges. I believe this would then negate any thoughts of malicious prosecution. However, I do believe that this is a step in the right direction to help alleviate the case load that we County Attorneys experience with bad checks.

In closing I would like to suggest that if you need any assistance or support in presenting any testimony to the committee to which the bill will be assigned please do not hesitate to contact my office.

"A" 1-25-83

JCPenney

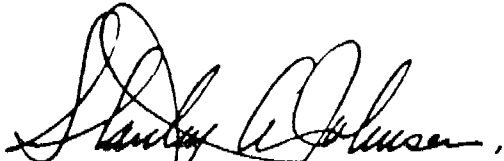
January 25, 1983

Mr. Chairman
Committee Members:

Bad checks are a problem common to small retailers and large retailers alike. In the local J.C. Penney store last year we had over 600 checks returned as N.S.F. While we were able to collect most of these, many people let them go as long as 60 days before they came to redeem them. This is very troublesome and costly to retailers.

The primary value of this law is to discourage bad check writing. A law identical to this one became effective in the state of Idaho on July 1st of last year. I recently talked with the manager of one of our larger Idaho J.C. Penney stores. He related that bad checks decreased about 50% after they posted the warning signs concerning the new law. Also, after six months they had not taken a single case to civil court.

I sincerely hope you will recommend this legislation to help the merchants of Montana.



Stanley R. Johnson, Mgr.
J.C. Penney, Helena, Mt.

WARNING

**Your
Bad Check
Could Cost You
A Minimum Of
\$100
Or
More**

Under Idaho's new civil law, for writing a bad check, (Chapter 31, Section 18-31 07), you are civilly liable and can be sued for a minimum of \$100 or three times the value of the check, whichever is greater plus court costs and attorney fees.

Idaho Retailers Association

EXHIBIT "C"
January 25, 1983

MONTANA LANDLORD'S ASSOCIATION INC.
312 MOORE LANE
BILLINGS, MONTANA 59101

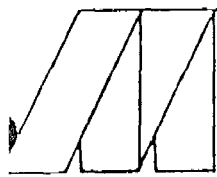
To: Chairmen and Committee members of the Senate Judiciary Committee

Re: House Bill 53

I am Ralph Lewis, State Vice President of the Montana Landlord's Association.

We definitely support this bill, as bad checks have been a real problem to the landlords. It nearly always takes a week to a week and a half to get a check back N.S.F. In certain cases it has been known to take up to thirty days. This amounts to rent unpaid for that amount of time. In the case that the check is not made good, then eviction proceedings must be started one to four weeks late. THIS IS LOST TIME. The landlord may never be able to make a collection. So therefore, we as landlords, are most interested in this bill as a deterrent to the problem.





MISSOULA COUNTY

OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59801
TELEPHONE: (406) 721-5700

ROBERT L. DESCHAMPS III

COUNTY ATTORNEY

December 29, 1982

George E. Allen
Executive Vice President
Montana Retail Association
P. O. Box 440
Helena, MT 59624

Dear Mr. Allen:

I have been given your letter of December 10 regarding your proposed dishonored check Bill. While I certainly have no objections to this proposed legislation, and don't mind saying so, I am not certain that it will be an effective deterrent to the bad check problem. The primary difficulty is that in order to recover anything the merchant is still going to have to bring a law suit to do it. Furthermore, the threat of a money judgment may not slow down most check writers since most of them don't have anything any way.

I do have one substitute suggestion. Your proposed Bill requires a ten day notice to the check writer as a condition precedent to the filing of the law suit. Montana's criminal statute regarding bad checks requires only a five day demand letter. I recommend that your time span be shortened to five days to prevent confusion and the requirement of sending multiple notices to check writers. Ideally, one written notice with one five day time frame that applies to both the civil and criminal remedies should be used. This will also be less expensive for the merchants since at least in this county we required the written notice to be sent "Certified Mail - Return Receipt Requested" so that we can establish that the check writer actually did get the written notice.

Thank you for thinking of us when you sought input on your Bill. If this office can be of any additional assistance on this matter or any other matter of mutual concern, please do not hesitate to contact me.

Sincerely,

Robert L. Deschamps III
Robert L. Deschamps III
Missoula County Attorney

RLD:lh

cc: Gene Jarvis, Manager
Sears Roebuck & Co.

"A"
1-25-83

PROPOSERS: Bill Romine, representing the Recking Yards, reaffirmed the need for this legislation as the money should be paid only after the work is done.

There being no further proponents and no opponents, Senator Christiaens closed by stating the practical effects of extending time will assure all work is performed.

RECONSIDERATION OF SENATE BILL 225: SB225 had been sent back to the Committee for reconsideration. Senator Towe had proposed amendments. The Committee felt it should ask the Department of Institutions to comment on the proposed amendment and review Curt Chisholm's testimony from the February 1 hearing. The major concerns was for an early release of a voluntary commital. Senator Shaw stated the 10 days is an appropriate amount of time to detain a commital. Further consideration was deferred until a comment is received from the Department.

ACTION ON HOUSE BILL 307: The Chairman announced that the Committee was ready to consider executive action on HB307. Under the current sentencing statutes, a judge can defer or suspend a sentence and this should satisfy the Committee's concerns with the mandatory sentence requirement of the bill. Senator Daniels was still concerned with the small jails in Montana abusing a law such as this. The Committee concurred that this law should apply to city and county jails where there are five or more active participants but they should be excluded from Section 2 of the bill. Senator Shaw moved that page 2, line 16 should be amended by striking "or city or county jail." This motion passed with only Senator Galt voting in opposition. Senator Brown then moved that the title be amended to reflect this change by inserting the wording "and the crime of riot in a city or county jail" after the word "facility" in line 7. This motion passed unanimously. Senator Brown then moved that HB307 BE CONCURRED IN AS AMENDED. This motion passed unanimously.

ACTION ON HOUSE BILL 53: New prepared amendments were distributed and the damages section was reviewed. Senator Galt moved to adopt the proposed amendments. This motion passed unanimously. Senator Mazurek then moved HB53 BE CONCURRED IN AS AMENDED. This motion passed with Senators Daniels and Shaw voting in opposition.

FURTHER CONSIDERATION OF SENATE BILL 351: The Committee discussed the exclusion of psychiatrists' subjective opinion at trial. Senator Halligan especially felt that an expert opinion as to mental condition is important for a jury to hear.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 2-10-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 10, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 53

Bergene (Mazurek)

Respectfully report as follows: That House Bill No. 53

third reading bill, be amended as follows:

1. Title, lines 8 and 9.
Strike: "AND AMENDING SECTION 27-1-312, MCA"
Insert: "COORDINATING THE REMEDY OF DAMAGES WITH OTHER
REMEDIES"
2. Page 1, line 12.
Strike: "NEW SECTION"
3. Page 1, line 20.
Strike: "shall be"
Insert: "may be no more than"

Continued on Page 2

And, as so amended,
BE CONCURRED IN

XXXXXX
DO PASS

4. Page 1, line 22.
Strike: ", up to an amount not exceeding"
Insert: ". However, damages may not exceed"
5. Page 2, line 3.
Strike: "defendant"
Insert: "drawer"
6. Page 2, line 9.
Strike: subsection 4 in its entirety.
7. Page 2, line 12.
Strike: section 2 in its entirety.
Insert: "Section 2. Coordination with other remedies. The remedy provided by [section 1]:
(1) may be pursued notwithstanding the provisions of 27-1-312;
(2) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and
(3) does not affect the engagement of the drawer provided for in 30-3-413 to pay the amount of the draft. However, in case of any inconsistency between the provisions of Title 30, chapter 3, the provisions of [section 1] apply."
8. Page 2, line 18.
Strike: "NEW SECTION."

And, as so amended,

BE CONCURRED IN

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